FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 19/04/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70370/2017-SM[BR] dated 03/04/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/364/2011	C.C.E, KANPUR 117/7, Sarvodaya Nagar, Kanpur 208005.
		Name and Address of Respondent
2		RAHMAN INDUSTRIES LTD. 184/167, WAJIDPUR, JAJMAU, KANPUR. (U.P.),,

Copy To
3Advocate(s) / Consultant(s):

VISHWANATH SHUKLA
(ADV.) GZB
UMA-105, ANSAL PLAZA,
VAISHALI, GHAZIABAD-
201010

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. ST/364/2011-ST[SM]

Arising out of Order-in-Appeal No. 620-ST/APPL/KNP/2010 dated 31.12.2010 passed by Commissioner (Appeals), Customs & Central Excise, Kanpur.

Commissioner, Customs & Central Excise, Kanpur. ...APPELLANT

VERSUS

M/s. Rahman Industries Ltd. ...RESPONDENT

APPEARANCE

Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department
Shri Vishwanath Shukla, Advocate for the assessee-respondent.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 03. 04. 2017
FINAL ORDER NO.-70370/2017

Per Mr. Anil Choudhary :

The issue in this appeal by Revenue is whether the respondent is eligible for refund of Service Tax paid on the business auxiliary service availed for export of goods that had been denied by the Adjudicating Authority on the ground of time barred which has been allowed by the learned Commissioner (Appeals), observing that there is no scheme with the Government to allow the refund for the amount that has not been paid or to allow the refund in advance against the amount which has to be deposited in future. Considering the date of payment of Service Tax, as the relevant date, read with Section 11B of Central

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Excise Act, as made applicable to Service Tax matters and further taking note of the provisions of FEMA, were remittance of commission to the foreign service provider is subject to realisation of the export proceeds which under the circumstances was paid after one year and as ~~the~~ a consequence the Service Tax involved thereon was also paid later on. Hence the eligibility to apply for the refund claim came into existence only after the Service Tax was paid. It is further observed that since the refund claim has been filed within one year from the date of deposit of tax, the respondents claim cannot be held as time-barred in the light of the explicit provisions of Section 11B of the Central Excise Act.

2. Being aggrieved the Revenue is in appeal on the ground that there is clear cut provision of six months time limit under para-2(e) of Notification No. 41/2007-ST dated 06/10/2007 (as amended), with no provision for its relaxation and reductions. It is further urged by Revenue that the special provisions of Notification No. 41/2007 will prevail on general provisions of law being Section 11B of the Central Excise Act, 1944.

3. Heard the parties.

4. Having considered rival contentions I find that the issue stands settled by the ruling of Hon'ble Delhi High Court in the case of Sony India Ltd. vs. Union of India. In the said judgment Hon'ble High Court has held that limitation cannot start to run prior to the date when the right to claim refund crystallizes. I take notice of the scheme of the refund of Service Tax under the provisions of Notification No. 41/2007 (as amended) and/or substituted by Notification No. 17/2009-ST. The

scheme is that the exporter has to pay the tax on the services availed by making payment to the service provider and thereafter only the exporter can claim refund. Thus, I hold that the ruling of Hon'ble Delhi High Court in Sony India Ltd. (*supra*) is squarely applicable and there is no merit in the appeal of Revenue. Accordingly, this appeal is dismissed. I further direct the Adjudicating Authority to issue the refund of Rs.2,28,577/- within a period of 45 days from the date receipt of the copy of this order along with interest as per Rules.

(Order was dictated in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

patel/-

Attested True Copy
03/05/2017
Asstt. Registrar
C.E.S.T.A.T.
38, M. G. MARG, ALLAHABAD-211001